153 Mich. 652, 118 N. W. 366; *Beauchamp* v. *Sturges & Burn Mfg. Co.*, 250 Ill. 303, 95 N. E. 204. And the employer is liable, even in case of a pure accident, as the act of employment contrary to the statute is negligence *per se*, giving a basis for the action, if the employment is a proximate cause of the injury. *Kircher* v. *Iron Clad Mfg. Co.*, 134 App. Div. 144, 118 N. Y. Supp. 823; *Osborne* v. *McMasters*, 40 Minn. 103, 41 N. W. 543; *Monroe* v. *Hartford St. Ry. Co.*, 76 Conn. 201, 56 Atl. 498. See *Smith* v. *Mine & Smelter Co.*, 32 Utah, 21, 30, 88 Pac. 683, 686. *Cf.* E. R. Thayer, "Public Wrong and Private Action," 27 HARV. L. REV. 317.

PUBLIC OFFICERS — NATURE OF PUBLIC OFFICE — BEGINNING OF TERM. — A statute increased the salary of holders of certain judicial offices, who should be thereafter elected or who had been elected, but whose terms of office had not commenced (1915 ILL. LAWS, 442, § 1). The commencement of the term was not fixed by the statute creating said offices. Relator was duly elected but had not assumed the duties of his office. He sues for the increased allowance. *Held*, that the term of office began on the date of election. *People ex rel. Holdom* v. *Sweitzer*, 117 N. E. 625 (Ill.).

Statutes creating public offices usually specifically defer the commencement of the term to an appreciable time after election to give the new incumbent opportunity to arrange his affairs and qualify for office. See MECHEM, PUBLIC OFFICERS, § 386. In the absence of such provision, however, the term will run from the date of election. *State* v. *Constable*, 7 Ohio, 7; *Haight* v. *Love*, 39 N. J. L. 476. But *cf. Brodie* v. *Campbell*, 17 Cal. 11. The question suggests itself as to who is vested with authority where qualification of the new official is delayed. At the common law an officer's rights and duties ceased at the expiration of his term. *People* v. *Tieman*, 30 Barb. (N. Y.) 193; *State* v. *Sheldon*, 8 S. D. 525. See *Badger* v. *United States*, 93 U. S. 599, 601. But *cf. Anon.*, 12 Mod. 256. In a few jurisdictions a holding over was permitted for considerations of convenience, until a successor was qualified. *Robb* v. *Carter*, 65 Md. 321, 4 Atl. 282; *Tuley* v. *State*, 1 Ind. 500. However, almost everywhere today statutes or constitutions provide for a holding over until the new officer qualifies. See WILLIAMS, PUBLIC OFFICERS, 10 LIB. AM. L. & PR. 150. The rights and duties of the extended period are not varied, and a resignation is permitted if allowed during the term. *State* v. *Page*, 20 Mont. 238, 50 Pac. 719. The decision in the principal case seems sound, and the statutory distinction between election and incumbency inapplicable to relator's term of office.

STATUTE OF FRAUDS — INTEREST IN LANDS — PAROL RESCISSION OF CONTRACT FOR SALE OF LAND. — An executory written contract for the sale of land was rescinded by a subsequent oral agreement. *Held*, that the agreement to rescind was not within the Statute of Frauds. *Ely* v. *Jones*, 168 Pac. 1102 (Kan.).

It is well settled that equitable interests are within the statute. *Toppin* v. *Lomas*, 16 C. B. 145; *Dougherty* v. *Catlett*, 129 Ill. 431, 21 N. E. 932. Since a binding contract for the sale of land creates an equitable interest in the land in the purchaser, it would seem that a rescission, which is tantamount to a reconveyance of this equitable interest, would be within the statute. This reasoning has the approval of most courts and text-writers. *Dougherty* v. *Catlett*, *supra; Dial* v. *Crain*, 10 Tex. 444; *Hughes* v. *Moore*, 7 Cranch (U. S.), 176. See *Carr* v. *Williams*, 17 Kan. 575, 582. See also BROWNE, STATUTE OF FRAUDS, § 267; SMITH, STATUTE OF FRAUDS, § 3631; WILLISTON, SALES, 149, note 1. However, the principal case has the support of some authority. See *Goss* v. *Lord Nugent*, 5 B. & Ad. 58, 66. If the contract did not give an equitable interest in the land, it would be on all-fours with contracts for the sale of chattels, of greater value than $500, and the rescission would be effectual. See WIL-

LISTON, SALES, § 119. The authorities for the doctrine of the principal case, however, admit that the purchaser has an equitable estate, but say that it fails by operation of law upon the extinguishment of the contract, or that it is "rebutted" by the agreement to rescind. *Proctor* v. *Thompson*, 13 Abb. N. C. (N. Y.) 340; *Raffensberger* v. *Cullison*, 28 Pa. St. 426. This reasoning appears to be fallacious, and the majority rule would seem preferable.

TAXATION — GENERAL LIMITATIONS ON THE TAXING POWER — STATE TAX ON EXPORTS. — A Pennsylvania statute imposed a tax on dealers in merchandise, based on the volume of business transacted. The tax was assessed upon the gross receipts of plaintiff's business, including the greater part that came from the sale of merchandise shipped to foreign countries, on orders taken there. *Held*, that in so far as this tax is levied upon such gross receipts, it constitutes a regulation of foreign commerce and an impost on exports, in violation of the United States Constitution, Article 1, §§ 8, 10. *Crew Levick Co.* v. *Pennsylvania*, 38 Sup. Ct. Rep. 126.

A state has no power to tax either foreign or interstate commerce. *Brown* v. *Maryland*, 12 Wheat. (U. S.) 419; *Case of the State Freight Tax*, 15 Wall. (U. S.) 232. See 28 HARV. L. REV. 93. A tax on those soliciting for an unlicensed foreign business establishment is unconstitutional. *Robbins* v. *Shelby County Taxing District*, 120 U. S. 489; *McCall* v. *California*, 136 U. S. 104. A state may not tax the gross receipts of railroads, or of other transportation companies, or telegraph companies, doing an interstate business. *Fargo* v. *Michigan*, 121 U. S. 230; *Galveston, etc. Ry. Co.* v. *Texas*, 210 U. S. 217; *Crutcher* v. *Kentucky*, 141 U. S. 47; *Leloup* v. *Port of Mobile*, 127 U. S. 640. A state has power to tax all property having a *situs* within its limits, and the use of such property in interstate commerce does not render it exempt from state taxes. A license fee may be exacted, even if it is a burden on interstate commerce, provided it is a legitimate exercise of the police power. *Wiggins Ferry Co.* v. *East St. Louis*, 107 U. S. 365. The greatest difficulty has been found in passing upon the validity of state taxes upon corporations doing an intra-state and an interstate business. *State Tax on Railway Gross Receipts*, 15 Wall. (U. S.) 284; *Philadelphia, etc. S. S. Co.* v. *Pennsylvania*, 122 U. S. 326; *Maine* v. *Grand Trunk Ry. Co.*, 142 U. S. 217; *West. Un. Tel. Co.* v. *Kansas*, 216 U. S. 1; *Williams* v. *Talladega*, 226 U. S. 405; *Baltic Mining Co.* v. *Massachusetts*, 231 U. S. 68; *Lusk* v. *Botkin*, 240 U. S. 236; *Looney* v. *Crane Co.*, 38 Sup. Ct. Rep. 85. See J. H. Beale, "Taxation of Foreign Corporations," 17 HARV. L. REV. 248; T. R. Powell, "Indirect Encroachments on the Federal Authority by the Taxing Powers of the States," 31 HARV. L. REV. 321, 572, 721. The holding in the principal case seems to throw additional doubt upon the authority of one prior adjudication. *Cf. Ficklin* v. *Shelby County Taxing District*, 145 U. S. 1. The Pennsylvania tax applied equally to domestic and foreign commerce, but this does not make it valid as a property or a privilege tax. Its operation was to lay a direct burden upon each transaction in foreign commerce, and as such was properly declared unconstitutional.

TAXATION — INCOME TAX — STOCK DIVIDENDS AS INCOME. — A corporation declared a stock dividend on the occasion of the transfer of surplus earnings to its capital account. The surplus was earned before the passage of the Income Tax Act but the dividend was declared after the passage of the act. The act provided for a tax to be "levied . . . upon the entire net income arising or accruing from all sources . . . to every citizen of the United States." A stockholder paid the income tax on his share of the dividend under protest, and sued to recover the amount paid. *Held*, that a stock dividend is not income, within the meaning of the act. *Towne* v. *Eisner*, 38 Sup. Ct. Rep. 158.

For a discussion of this case, see Notes, page 787.